



## COMMUNITY SWIMMING GRANTS PROGRAM TERMS AND CONDITIONS

V1.1 25/09/2019

1. By applying for and receiving Swimming Australia (SA) Community Swimming Grants (CSGP) funding, the Grant Recipient agrees to these terms and conditions.
2. SA may accept or reject the application for funding at its absolute discretion. If the application is accepted, the Grant Recipient will be provided funding as agreed within the grant application to deliver the Program in accordance with these terms and conditions. It is the Grant Recipient's responsibility to ensure that they have met and continue to meet these terms and conditions for the length of the Program.
3. In these terms and conditions, the following words have the following meanings:

**Approved Personnel** means a coach or teacher who:

- (a) holds one or more of the following qualifications, or approved equivalent, as a minimum standard; Swim Australia Teacher qualification, AUSTSWIM Teacher of Swimming and Water Safety and Development Coach Accreditation. For other activity such as aquatics fitness activity, SA will request accreditation is provided;
- (b) holds a valid Working with Children Check or equivalent (or national police check in states which do not require a Working with Children Check).

To be an Approved Personnel the person must provide to the Grant Recipient evidence that he/she satisfies each requirement, along with any other evidence the Grant Recipient considers appropriate, and the Grant Recipient must be able to provide that information to SA, upon request, in accordance with paragraph 7(n).

**Confidential Information** includes all confidential or proprietary information of SA whether written, graphic, oral or in any other form but excludes information which is already in the public domain or which the grant recipient is bound by law to disclose.

**Grant Recipient** means the entity named in the Letter of Agreement

**Grant Recipient Program** means the program and resources developed and owned by the Grant Recipient.

**Facility** means the facility or facilities that the Grant Recipient delivers the Program from.

**Letter of Agreement** means the legally enforceable letter executed by SA and the Grant Recipient.



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MAJOR PARTNERS

**Marks** means all trade marks, designs, logos, symbols and other indicia including words that are used by SA in relation to the Program or any other aspect of SA's business.

**Program** means the Community Swimming Grants Program.

**Participant** means a person who enrolls in, attends or participates in the Program delivered by the Grant Recipient at the Facility.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**SA Representative** means the person appointed by SA (from time to time) to administer the Program and liaise with and oversee the operations of the Program by the Grant Recipient on behalf of SA.

#### **Term**

- 4. These terms and conditions commence on the date SA grants funding to the Grant Recipient and expire as of 30 September 2020.

#### **Grant of rights**

- 5. Subject to these terms and conditions, SA grants to the Grant Recipient funding to deliver the Program.

#### **Responsibilities of SA**

- 6. SA must:
  - (a) provide the funding to the Grant Recipient as determined in the Letter of Agreement notification for the delivery of the Program;
  - (b) provide SA's written policies, procedures and directives as SA considers relevant to the Grant Recipient for the delivery of the Program;
  - (c) provide a process to allow the Grant Recipient to, subject to receipt of Participant enrolment information in relation to a Program, provide such information to SA;
  - (d) provide Program monitoring and evaluation pre and post Program survey details to allow the Grant Recipient to share the survey with all Program Participants;

- (e) provide Program marketing information and resources to allow the Grant Recipient to promote Program delivery.

### **Responsibilities of the Grant Recipient**

- 7. The Grant Recipient must:

#### **In relation to the Program plan:**

- (a) only conduct, hold or deliver the Program in accordance with the plan outlined in the grant application, unless otherwise notifying SA of Program changes;

#### **In relation to the Program monitoring and evaluation:**

- (b) ensure Program Participants receive pre and post Program surveys for their completion;
- (c) provide Program feedback and information (as required by SA) in relation to the Program content, Participant numbers and other information for the purposes of reporting to the key funding agency, Sport Australia;
- (d) keep accurate Participant records with respect to the Program, with the following information provided to SA upon request (Participant first name, Participant surname, Participant gender, Participant date of birth, Participant email, Participant phone number, Participant post code along with demographic information including impairment type if PWD (physical, visual, intellectual, hearing, other), place of origin/language if CALD, ATSI status and parent details for dependents (Under 18).
- (e) upon request supply to SA any information which relates to either Participants or the Program;

#### **In relation to the Program marketing:**

- (f) only use the Marks in accordance with the brand guidelines provided by SA from time to time;
- (g) subject to these terms and conditions, promote and market the Program to Participants and potential Participants;

#### **In relation to the Program funding:**

- (h) not authorise any third party to conduct the Program without SA's prior written consent;
- (i) provide SA with funding acquittal details as required;

**In relation to Participant safety and Program quality:**

- (j) take reasonable steps to satisfy itself that each Participant participating in the Program at that Facility is fit and healthy to participate in the Program;
- (k) use reasonable endeavours to ensure that in delivering the Program:
  - (i) Participants are grouped with relative competency levels;
  - (ii) Participant ratios are in accordance with the requirements of the Facility;
  - (iii) consideration is given to SA swimming and coaching pathway opportunities for the Participants to enable development and progression;
- (l) ensure that each person engaged to deliver the Program fulfils the requirements to be an Approved Personnel (see set out in paragraph 3);
- (m) provide the Facilities and equipment required for the delivery of the Program and provide all Participants with relevant information in relation to the Facilities policies (e.g.: emergency action plan) as well as instruction on the use of program equipment;
- (n) upon request, provide to SA evidence that the requirements set out in paragraph 7(l) are being complied with;
- (o) upon request, provide to SA evidence that the Grant Recipient has in place a policy for the protection of children and young people
- (p) only use the Approved Personnel to deliver the Program;
- (q) conduct the Program and carry out its obligations under these terms and conditions in a manner which will not cause harm to the goodwill attached to SA or the Program;
- (r) comply with all of SA's written policies, procedures and directives related to the Program and as advised by SA from time to time;
- (s) keep SA informed in writing of any coach, teacher or Participant's queries or complaints with respect to the Program and follow the complaints policy and procedure set out in any relevant Grant Recipient child protection policy as notified to the Grant Recipient from time to time;
- (t) where requested by SA in its absolute discretion acting reasonably, manage any complaint lodged under the Grant Recipient's complaints policy including any appeals policy

- (u) not undertake any activity or permit any Participant or Approved Personnel to undertake any activity that will (or is likely to) bring SA or its affiliates or their services and products into disrepute and must not make any disparaging statement (written or verbal) about SA's competitors or the services or products of such competitors;
  - (v) report to and comply with all reasonable directives from the SA Representative;
  - (w) comply with all applicable laws, regulations and codes.
8. For the avoidance of doubt, the Grant Recipient acknowledges that it does not have any marketing or sponsorship rights in relation to the Program. The Grant Recipient covenants and warrants to SA that it will observe and perform these terms and conditions and in particular it will:
- (a) not use or authorise any third party to use any Program content without the prior written approval of SA;
  - (b) not engage in conduct that suggests it has a sponsorship, approval or affiliation with SA or the Program that it does not have;
  - (c) not act in any way or manner which is, in the reasonable opinion of SA, prejudicial or otherwise detrimental to the Program or SA;
  - (d) at all times use all reasonable efforts to preserve the goodwill and reputation of the Program and SA;
  - (e) comply with any reasonable requirements and directions specified by SA from time to time in relation to any aspect of the Program;
  - (f) not, nor permit any of its officers, servants, employees, contractors or agents to do or perform any act which prejudices or brings into disrepute the Program, SA or any of SA's officers, employees or agents; and
  - (g) provide all necessary support, information, materials and assistance to SA to enable it to meet its obligations under these terms and conditions.

### **Mutual acknowledgement**

9. The parties acknowledge and agree:
- (a) SA may contact Participants directly to determine their satisfaction or gather Program insights with the Grant Recipient or the Program;
  - (b) where Grant Recipient requirements that are due to have been provided to SA by the Grant Recipient have not been provided, SA may suspend the

Grant Recipient's right to provide the Program and exercise any rights under these terms and conditions until all outstanding requirements are provided;

- (c) the Grant Recipient is not entitled to seek reimbursement from SA for any of the costs or expenses unless otherwise agreed in writing by SA;
- (d) the Grant Recipient must not contractually bind SA; and
- (e) the approval of the Grant Recipient under these terms and conditions is not an implied endorsement by SA of any other business carried on by the Grant Recipient and no such representation has been or may be made.

### **Insurance**

10. The Grant Recipient must, at all times during the Term, to the satisfaction of SA (acting reasonably), obtain and maintain:
  - (a) public liability insurance against claims for bodily and personal injury, death and third party property damage in the minimum amount of \$10,000,000 per occurrence;
  - (b) product liability insurance for goods and services sold and injury caused by or resulting from the acts, omissions or misrepresentations of the Grant Recipient, its affiliates, servants or agents, employees, sub-contractors, and any others for whom it is responsible under these terms and conditions or otherwise in the amount of \$10,000,000 being in the aggregate in any one period of insurance;
  - (c) professional indemnity insurance in the minimum amount of \$1,000,000 per occurrence;
  - (d) workers compensation insurance covering liability to employees of the Grant Recipient under the laws of their place of employment and any other place where any such employees may be required to render any services and employer's common law liability insurance, without limitation of amount. The Grant Recipient shall obtain any extension of these insurances to indemnify SA for SA's statutory liability for persons employed by the Grant Recipient
11. Such insurance must name SA as an interested party for its respective rights and interests.
12. The Grant Recipient must ensure all Approved Personnel are covered by the Grant Recipient's insurance (or Approved Personnel must directly hold insurance that satisfy clause 10 and 11).



13. At the commencement of the Term (and at any time during the Term upon request), the Grant Recipient must provide proof to the reasonable satisfaction of SA as to the currency of the insurance coverage.

#### **Sub-contractors**

14. The Grant Recipient must:
- (a) subject to Approved Personnel engaged under paragraph 7(l), not engage sub-contractors to perform any of its obligations under these terms and conditions without prior written approval of SA, which approval shall not be unreasonably withheld; and
  - (b) ensure that all sub-contractors approved by SA and contracted by the Grant Recipient are subject to the terms of these terms and conditions and bound by the obligations applicable to the Grant Recipient as if they were a party to these terms and conditions.

#### **Non-Assignment**

15. The Grant Recipient shall not sell or otherwise assign any right or interest under these terms and conditions or grant any third party the right to undertake any work or other obligation which is to be performed by the Grant Recipient under these terms and conditions without the prior written consent of SA. SA may withhold its consent at its absolute discretion. Any purported assignment or grant of rights in contravention of this paragraph is void and ineffective.

#### **Termination**

16. SA may terminate these terms and conditions:
- (a) if the Grant Recipient breaches any of its obligations under these terms and conditions and SA has given the Grant Recipient written notice specifying the rectification required and the Grant Recipient fails to remedy that breach within a period of 30 days after the notice has been given by SA; or
  - (b) immediately if SA is made aware of any relevant change to the Working with Children Check status (or relevant State/Territory equivalent) of any Approved Personnel or, in the alternative, may suspend the Grant Recipient's rights under these terms and conditions;
  - (c) immediately by notice in writing to the Grant Recipient if it or any of its agents or representatives does or purports to do any of the following:
    - (i) enters into liquidation or the entry by it into an arrangement or composition with creditors;



- (ii) any event happening to the Grant Recipient which will allow a court to wind it up or a liquidator, receiver, receiver and manager, administrator or similar officer is appointed over all or part of its assets or an event occurs which would allow such an appointment to be made;
  - (iii) is, in SA's reasonable opinion, unable to pay its debts as and when they fall due;
  - (iv) if the Grant Recipient being an individual, should die or be made or declared bankrupt or becomes incapable of managing his/her own affairs;
  - (v) if all or any fundamental part of these terms and conditions becomes void, illegal, invalid, unenforceable, or of limited or reduced force or effect;
  - (vi) if there is any change in ownership or effective control of the Grant Recipient's Organisation or any company of which the Grant Recipient is a subsidiary and SA has not given written approval which shall not be unreasonably withheld;
  - (vii) if any action is initiated by any competent authority with a view to striking the Grant Recipient's name off any register of companies;
  - (viii) if the Grant Recipient or any director of the Grant Recipient is found guilty of any charge of fraud or dishonesty or engages in any deceptive trade practices under Australian law;
  - (ix) breaches any law, regulation or code of practice in the course of performing its obligations under these terms and conditions; or
  - (x) breaches SA's copyright, trade mark or other intellectual or industrial property rights.
17. Either party may terminate these terms and conditions, without need to show cause, by giving the other party 30 days' written notice.
18. Upon termination or expiry of these terms and conditions, the Grant Recipient shall immediately:
- (a) discontinue any use of the Marks, including but not limited to use in advertising or business materials of the Grant Recipient;
  - (b) remove and return to SA, or destroy at SA's request, any and all promotional and other material supplied by SA;



- (c) return, upon request, all Confidential Information in whatever form held except that which SA determines is necessary to operate and maintain the Program that the Grant Recipient has previously been granted the right to provide;
- (d) cease holding itself out in any manner as having approval to conduct the Program; and
- (e) at the request of SA, return to SA any funding not expended on the delivery of the Program at the point of termination

### Intellectual Property

- 19. Unless expressly allowed under these terms and conditions, the Grant Recipient must not use any Marks of SA.
- 20. The Grant Recipient acknowledges SA's ownership of the Marks and must not conduct business under or use any of the Marks or derivatives or variations thereof and must not directly or indirectly hold itself out as having any relation to SA or its affiliates other than as a Program provider.
- 21. Where the Grant Recipient has first obtained SA's written permission, it may authorise an advertisement or promotion which uses the Marks or a reference to SA, provided that such use of the Marks or a reference to SA is subject to review and approval by SA prior to publication, with respect to, but not limited to, context, style, appearance, composition, timing and media.
- 22. Advertising by the Grant Recipient which shows and identifies items marketed by the Grant Recipient other than the Program may not use the Marks unless those items are clearly separated from and not associated with the Marks. The Marks must not be used by the Grant Recipient in any way to imply or suggest SA's endorsement of non-SA products and/or services, unless SA has given its prior written consent to such use.
- 23. The Grant Recipient must not alter or remove any Mark without the prior written approval of SA.
- 24. The Grant Recipient must not dispute or challenge the validity of the Marks during the Term or after termination nor assist any other person to do so. The Grant Recipient Centre must provide all assistance requested by SA in order to ensure the protection of the Marks. The Grant Recipient must recognise, safeguard and protect the Marks and must not infringe them or allow them to be infringed and must inform SA of any threatened or actual or suspected infringement, imitation, unauthorised use or misuse of the Marks that may at any time come to the attention of the Grant Recipient.

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25. The Grant Recipient must not use SA's name or any abbreviation, contraction or simulation thereof without SA's prior review of such use and express written permission.
26. The Grant Recipient must not use or seek to register any intellectual property which:
  - (a) contains or is similar to; or
  - (b) is substantially similar to; or
  - (c) so nearly resembles that it is likely to cause deception or confusion in relation to,  
  
any of the Marks or any other intellectual property owned by SA.
27. The parties acknowledge and agree that the Grant Recipient retains all intellectual property rights in the Grant Recipient Program.
28. All rights arising from the use by the Grant Recipient of the Program shall accrue to the benefit of SA and the Grant Recipient shall not obtain any rights in respect of or to the Program except for the rights conferred expressly under these terms and conditions.

#### **Confidential Information**

29. Nothing in these terms and conditions shall require SA to disclose to the Grant Recipient any information that SA regards as confidential to its operations.
30. All Confidential Information that is provided to the Grant Recipient under or in relation to these terms and conditions or identified as confidential or proprietary by SA must be kept confidential.
31. Unless SA otherwise agrees in writing, all Confidential Information shall:
  - (a) be treated in strict confidence by the Grant Recipient and used by the Grant Recipient only for the purposes of performing the Grant Recipient's obligations under these terms and conditions;
  - (b) not be reproduced or copied in whole or in part, except as is necessary for proper use under these terms and conditions;
  - (c) be made available only to such employees or sub-contractors of the Grant Recipient who have a need to have access to the Confidential Information for the purposes of these terms and conditions and have entered into a confidentiality agreement with the Grant Recipient agreeing not to disclose any Confidential Information which would result in a breach of this paragraph by the Grant Recipient; and

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- (d) together with any copies thereof, in whatever form held, immediately be returned, destroyed or erased at the direction of SA.
32. The Grant Recipient acknowledges that a breach of the Confidential Information paragraphs may cause SA irreparable harm for which damages may be an inadequate remedy. Accordingly, SA may seek urgent injunctive relief for a breach, notwithstanding and in addition to any other remedies which may be available to it.

### Privacy

33. The Grant Recipient acknowledges that, in delivering the Program, it will be collecting and disclosing to SA, Personal Information for its or SA's use in enrolling Participants, delivering the Program (supported by the App) to Participants and providing access to the Portal.
34. The Grant Recipient agrees to ensure that:
- (a) Participants understand that the primary or main purpose for which their Personal Information is collected is so that this can be used by the Grant Recipient or disclosed to SA (or its Program partners) for the purposes of recording the interest of those Participants or prospective Participants in the Program or other SA programs and sending them further information on SA programs, events and activities (**Purpose**);
  - (b) it will inform the Participant that the Personal Information collected in connection with the Program may be used by SA in the marketing, promotion or sale of other products or services;
  - (c) when collecting, storing, using and disclosing Personal Information, the Grant Recipient complies with the Australian Privacy Principles (as contained in the *Privacy Act 1988 (Cth)*); and
  - (d) it otherwise complies, and ensures that its employees, contractors and agents comply, with the *Privacy Act 1988 (Cth)* and any SA privacy policy.
35. SA has the right to request that the Grant Recipient provide the relevant documents to SA (including the Grant Recipient collection notice) to ensure that the Grant Recipient is meeting requirements in paragraphs 33 to 37.
36. To the extent that the Grant Recipient sends electronic messages in connection with the Program, the Grant Recipient must ensure that it and its employees, contractors and agents comply with the requirements of the *Spam Act 2003 (Cth)*, including by ensuring that requisite consent from the recipient has been obtained, and otherwise comply with any related policies and procedures of SA.
37. The Grant Recipient must notify SA immediately if it becomes aware of a breach or possible breach of any of its obligations under these paragraphs 33 to 37.

## Liability

38. Certain laws imply terms, conditions and warranties into contracts for the supply of goods or services and products and prohibit the exclusion, restriction or modification of those terms, conditions and warranties (**prescribed terms**). Some prescribed terms permit a supplier to limit its liability for a breach thereof. Except as provided by prescribed terms, the liability of SA in respect of a breach of a prescribed term relating to the supply of any goods, services or products supplied by SA to the Grant Recipient in connection with these terms and conditions or the Program is limited, at the option of SA, to the replacement or repair of the goods, resupply of the services or products or payment of the costs of replacing or repairing the goods or resupplying the services or products.
39. The parties agree that neither party shall be liable to the other party for any special, incidental, consequential, or any other indirect loss or damage whatsoever, arising out of or in connection with the Program or the performance of these terms and conditions.
40. The Grant Recipient assumes all liability for any acts or omissions of its agents, representatives and sub-contractors as if they were the acts and omissions of the Grant Recipient. SA is not liable for and does not guarantee the performance of any obligation which the Grant Recipient may have to its agents, representatives or sub-contractors, including the payment of any remuneration and the Grant Recipient will so inform any agents, representatives and sub-contractors it appoints.
41. Except as required by law, SA shall have no liability to the Grant Recipient for any payments that might have been received but for SA's inability or failure to provide the Funding to the Grant Recipient or for any delays in the provision of the Funding to the Grant Recipient or in the event of discontinuation of the Program or Funding for any reason.

## Indemnity

42. Subject to paragraph 39, the Grant Recipient indemnifies and shall keep indemnified SA, its directors, employees and agents from all claims, actions, suits, demands and proceedings made or brought against SA and against all damage, loss, costs, expenses or liability (including legal costs on an indemnity basis) which, but for this indemnity, SA may suffer or may incur by reason of or in connection with the performance or non-performance (including without limitation any act or omission) by the Grant Recipient of its obligations under these terms and conditions or by any employee or sub-contractor of the Grant Recipient with respect to the obligations of the Grant Recipient under these terms and conditions.

## GST

43. All amounts referred to in these terms and conditions are exclusive of GST.

44. Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in this paragraph.
- (a) If GST is payable in relation to a Taxable Supply under these terms and conditions, then the Supplier may increase the amount otherwise payable for the Supply under these terms and conditions by the amount of such GST or otherwise recover from the Purchaser the amount of such GST.
- (b) The recovery of any amount in respect of GST by the Supplier from the Purchaser is subject to the Supplier issuing to the Purchaser a Tax Invoice or an Adjustment Note enabling the Purchaser to claim any applicable tax credits in respect of the Supply.
45. Each Party warrants that it is Registered for GST purposes.

### **General**

46. These terms and conditions do not appoint a party as an agent of the other, or create a partnership, joint venture or similar relationship between the parties and neither party shall have the power to bind the other party in any manner whatsoever.
47. Any provision of these terms and conditions which is invalid, void or unenforceable may be severed from these terms and conditions without affecting the enforceability of other provisions.
48. The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of these terms and conditions or exercise any election or discretion under these terms and conditions shall not operate as a waiver of the rights of a party, whether express or implied, arising under these terms and conditions.
49. SA may vary these terms and conditions at any time to ensure compliance with government, industry or SA organisational changes and such variation(s) shall be deemed effective 5 business days after SA has notified the Grant Recipient in writing.
50. SA shall have the unqualified right to set off any and all money due to it by the Grant Recipient, whether or not such money is due to SA under the terms of these terms and conditions or otherwise, against any monies due to the Grant Recipient by it.
51. These terms and conditions shall be governed by and construed in accordance with the laws in force in Victoria and each party submits to the jurisdiction of courts and tribunals exercising jurisdiction in that State.